

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

ROSA CABAN,

Plaintiff,

- against -

X

Index No.

**THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY
DEPARTMENT OF CORRECTIONS, DETECTIVE
ABDIELANDERSON AND POLICE OFFICER JOHN DOE,**

VERIFIED COMPLAINT

Defendant(s).

X

Plaintiff ROSA CABAN by her attorney, JOEL K. PEISTER, as and for her complaint against the defendants, alleges, upon information and belief, the following:

NATURE OF ACTION

1: ROSA CABAN, seeks to recover damages for assault, battery, false arrest, false imprisonment and malicious prosecution by certain members of the New York City Police Department, who were not properly supervised when they arrested the Plaintiff ROSA CABAN on or about May 7, 2013 in the County of Bronx, New York.

2. At the time of the false arrest, etc. the plaintiff, ROSA CABAN was a resident of the Bronx, New York.

PARTIES

3: That at all times hereinafter mentioned, the Defendant, THE CITY OF NEW YORK, hereinafter referred to as the "CITY", was and still is a municipal corporation organized and existing under and by virtue of the laws of the State of New York.

4: That at all times hereinafter mentioned the Defendant, NEW YORK CITY POLICE DEPARTMENT, hereinafter referred to as "POLICE", was and is an agency of the defendant, "CITY", and was and still is a municipal corporation organized and existing under and by virtue of the law of the State of New York.

5: That at all times hereinafter mentioned the Defendant New York City Department of Corrections, hereinafter referred to as "Corrections", was and is an agency of the defendant, "CITY", and was and still is a municipal corporation organized and existing under and by virtue of the law of the State of New York

6: That at all times hereinafter mentioned the Defendant, Detective Abdiel Anderson, Shield # 001429, NARC BBX, hereinafter referred to as "ANDERSON" and was and is a POLICE OFFICER, employed by the defendant "POLICE".

7: That on and prior to May 7, 2013 the aforesaid defendant, "ANDERSON" was employed by the defendant "POLICE" and was assigned in the borough of Bronx, County of Bronx, City and State of New York.

8: That at all times hereinafter mentioned the defendant, POLICE OFFICER JOHN DOE, NARC BBX, hereinafter referred to as "JOHN DOE" and was and is a POLICE OFFICER, employed by the defendant "POLICE".

9: That on and prior to May 7, 2013 the aforesaid defendant, "JOHN DOE" was employed by the defendant "POLICE" and was assigned in the borough of Bronx, County of Bronx, City and State of New York.

AS AND FOR A FIRST CAUSE OF ACTION

10: That on or about May 7, 2013 the plaintiff, ROSA CABAN while lawfully in the vicinity of 521 E. 148th Street, County of Bronx, City and State of New York, was without just cause or provocation, maliciously, intentionally and falsely accused by defendant "ANDERSON", on the information of Police Officer John Doe, of having committed the crime of Assault in the Second Degree (P.L.S. 120.05(3)) and related charges.

11: That on or about May 7, 2013 the Plaintiff, ROSA CABAN was without just cause or provocation, and with reckless and negligent disregard for the truth, and without investigation, placed under arrest by defendants, their agents, servants, and/or employees, and in particular, by defendant "ANDERSON".

12: That on or about May 7, 2013 and upon arresting the plaintiff ROSA CABAN and depriving her of her liberty, the defendant "ANDERSON" took the plaintiff, ROSA CABAN to a police station in the County of the Bronx and entered her on the records as under arrest on charges of Assault in the Second Degree (P.L.S 120.05(3)) and other related charges.

13: That on or about May 7, 2013 the defendant "ANDERSON" further caused the plaintiff, ROSA CABAN, to have her fingerprints and photographs to be taken in accordance with police procedures for the arrest of criminals and held her on those charges at a police station and thereafter at the Courthouse located at 215 East 161st Street, Borough of Bronx, County of Bronx, City and State of New York.

14: That on or about the May 7, 2013, as a result of the defendant's actions a criminal complaint was issued and a criminal action against the Plaintiff ROSA CABAN, was commenced.

15: That solely as a result of the aforesaid, the plaintiff, ROSA CABAN'S life was interfered with.

16: That solely as a result of the assault, battery, false arrest, false imprisonment and malicious prosecution of the plaintiff, ROSA CABAN, was deprived of her liberty and was subjected to scorn and ridicule and was degraded in the esteem of the community.

17: That on or about January 30, 2014, in Part IAS3 of the Bronx Supreme Court the Defendant the City of New York stipulated that the Plaintiff, ROSA CABAN be allowed to file the late Notice of Claim, containing the statement of the name and place of residence of the claimant by the street and number and his attorney and describing the time when the particular claim and circumstances under which the damages and injuries that was personally served upon the defendant CITY, their agents, servants an/or employees at the Law Department; this action was not commenced to recover upon or force claim until the expiration of 30 days or thereafter, and this action was commenced within the time allowed by law.

18: That the defendants, THE CITY OF NEW YORK, ET., AL., requested a hearing pursuant to §50-H of the General Municipal law and that such was held on March 13, 2014.

19: That all charges against the Plaintiff ROSA CABAN were dismissed by the Bronx County Grand Jury on or about May 31, 2013.

20: That on or about May 17, 2013, without Plaintiff ROSA CABAN's consent, the New York City Department of Corrections took her in handcuffs, to Elmhurst Hospital, Elmhurst, New York, for a psychiatric examination.

21: That by reason of the foregoing, the Plaintiff ROSA CABAN has been damaged in sum exceeding the jurisdiction of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION

22: Plaintiff ROSA CABAN repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" THROUGH "20" with the same force and effect as if fully set forth at length herein.

23: That at all times hereinafter mentioned, false arrest, false imprisonment and malicious prosecution of Plaintiff ROSA CABAN was caused solely as a result of the negligence of the defendants, their agents, servants and/or employees.

24: That by reason of the foregoing, the Plaintiff ROSA CABAN has been damaged in a sum exceeding the jurisdiction of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION

25: Plaintiff ROSA CABAN repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" THROUGH "20" and "22" THROUGH "23" with the same force and effect as if fully set forth at length herein.

26: That on or about May 7, 2013, and while in the custody of the defendants in the County of Bronx, New York, the Plaintiff, ROSA CABAN, was intentionally pushed, assaulted, battered violated strip searched, humiliated and handcuffed by the defendants, "ANDERSON" and "JOHN DOE" by being handcuffed tightly, thrown into the police van, by the defendants "ANDERSON" and "JOHN DOE", acting within the scope of their employment and

authority in such a manner as to knowingly cause injury to Plaintiff ROSA CABAN. That the defendants, their agents, servants and employees, acting as agents and on behalf of defendants, within the scope of their employment, and in particular defendants "ANDERSON" and "JOHN DOE" intentionally, willfully and maliciously assaulted and battered the Plaintiff, ROSA CABAN, in that they have the real or apparent ability to cause imminent harmful and/or offensive bodily contact and intentionally did violent and/or menacing acts which threatened such contact to the Plaintiff, ROSA CABAN, and their acts caused apprehension of such contact in the plaintiff, and in a hostile and/or offensive manner touched and beat the plaintiff an/or offensive bodily contact to the plaintiff and caused such battery in and about the wrists and hands.

27: That by reason of the aforesaid intentional assault and battery committed by the defendants, their agents, servants and employees, in particular "ANDERSON" and "JOHN DOE" acting within the scope of his employment and authority and without any probable or reasonable cause, the plaintiff, ROSA CABAN, suffered great and permanent bodily injury in and about her wrists, and hands and was rendered sick, sore, lame and disabled, and suffered conscious pain and suffering, including anxiety and fear of the police, and that was otherwise damaged and will continue to be so.

28: That by reason of the foregoing, the Plaintiff ROSA CABAN has been damaged in a sum exceeding the jurisdiction of all lower courts.

AS AND FOR FOURTH CAUSE OF ACTION

29: Plaintiff ROSA CABAN repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" THROUGH "20", "22" THROUGH "23" and "25" THROUGH "27" with the same force and effect as is fully set forth at length herein.

30: That the defendants, their agents, servants and employees failed to adequately and properly train, supervise, discipline or in any other way control the behavior of their personnel and in particular defendant "ANDERSON" and "JOHN DOE", and in their hiring practices in the exercise of their functions; in that they had a reckless lack of cautious regard for the rights of the public, including plaintiff, and exhibited a lack of that degree of due care which prudent and reasonable individuals would show in executing the duties of the defendants.

31: That the defendants, their agents, servants and employees to adequately and properly train, supervise, discipline or in any other way control the behavior or their personnel in the exercise of their functions, was carried out willfully, wantonly, maliciously with such reckless disregard for the consequences as to display a conscious disregard for the dangers of harm and injury to the public, including plaintiff.

32: Due to the acts of the defendants, their agents, servants and employees herein, and failure to discipline and properly hire their employees and the continued employment of said employees presents a clear and present danger to the citizens of the City of New York and State of New York.

33: That the plaintiff, ROSA CABAN, did not consent to the aforementioned conduct of the defendants, their agents, servants and employees in any way contribute to the said conduct.

34: That the injuries sustained by the plaintiff, ROSA CABAN, resulted from the negligence of the defendants in employing and continuing to employ, without adequate training and supervision, employees of violent character, unsuitable temperament and insensitive disposition.

35: That by reason of the foregoing, the Plaintiff ROSA CABAN has been damaged in a sum exceeding the jurisdiction of all lower courts.

AS AND FOR FIFTH CAUSE OF ACTION

36: Plaintiff ROSA CABAN repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" THROUGH "20", "22" THROUGH "23", "25" THROUGH "27" and "29" THROUGH "34", with the same force and effect as is fully set forth at length herein.

37: Defendants, who were acting in concert and within the scope of their authority, arrested and caused the Plaintiff ROSA CABAN, to be imprisoned without probable cause in violation of Plaintiffs' rights to be free of an unreasonable seizure under the Fourth Amendment to the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

38: Defendants intended to confine the Plaintiff, ROSA CABAN, and, in fact, confined the Plaintiff and the Plaintiff was conscious of confinement.

39: The Plaintiff, ROSA CABAN did not consent to the confinement and the confinement was not otherwise privileged.

40: That by reason of the foregoing, the Plaintiff ROSA CABAN has been damaged in a sum exceeding the jurisdiction of all lower courts.

AS AND FOR A SIXTH CAUSE OF ACTION

41: Plaintiff ROSA CABAN repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" THROUGH "20", "22" THROUGH "23", "25" THROUGH "27", "29" THROUGH "34" and "36" THOUGH "39" with the same force and effect as is fully set forth at length herein.

42: The use of excessive force by the defendants "ANDERSON" and "JOHN DOE" grabbing, pushing, handcuffing tightly, strip seaching and brutalizing the Plaintiff ROSA CABAN, was an unreasonable physical seizure of the Plaintiff, in violation of her rights under the Fourth Amendment to the United States Constitution.

43: That by reason of the foregoing, the Plaintiff, ROSA CABAN has been damaged in a sum exceeding jurisdiction of all lower courts.

WHEREFORE, The plaintiff demands judgment against the defendants on the First Cause of Action in a sum exceeding the jurisdiction of all lower courts, that the plaintiff demands judgment against the defendants on the Second Cause of Action in the a sum exceeding the jurisdiction of all lower courts, that the plaintiff demands judgment against the defendants on the Third Cause of Action in a sum exceeding the jurisdiction of all lower courts, that the plaintiff demands judgement against the defendants on the Fourth Cause of Action in a sum exceeding the jurisdiction of all lower courts, that the plaintiff demands judgement against the defendants on the Fifth Cause of Action in a sum exceeding the jurisdiction of all lower courts, that the plaintiff demands judgement against the defendants on the Sixth Cause of Action in a sum exceeding the jurisdiction of all lower courts, together with the costs and disbursements of this action.

Dated: New York, New York
April 21, 2012

A large, stylized handwritten signature in black ink, appearing to be 'JP', is written over a horizontal line.

JOEL K. PEISTER, ESQ.

Attorney for Plaintiff

9 E. 40th Street 11th Floor
New York, New York, 10016

TO: ZACHARY CARTER, ESQ.
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007

**SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF BRONX**

ROSA CABAN,

Plaintiff,

- against -

Index No.

VERIFICATION

**THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK DEPARTMENT
OF CORECTIONS, DETECTIVE ABDIEL ANDERSON
AND POLICE OFFICER JOHN DOE**

Defendant(s).

STATE OF NEW YORK }
 }ss:
COUNTY OF NEW YORK }

ROSA CABAN being duly sworn, deposes and says:

1. I am the Plaintiff in the above-captioned action and as such I am fully familiar with the facts and circumstances of this matter.
2. I have read the Complaint and the allegations contained therein are true to my knowledge except as to matters alleged on information and belief, and as to those matters, I believe them to be true.
3. The basis of my information and belief are: my review of papers and conversations with others.

Sworn to before me this

26th day of April, 2014

NOTARY PUBLIC

JOEL K. PEISTER
Notary Public, State of New York
No. 02PE4694041
Qualified in New York County
Commission Expires Feb. 28, 2010

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

ROSA CABAN,

Plaintiff(s),

- against -

**THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, NEW YORK
CITY DEPARTMENT OF CORRECTIONS, DETECTIVE ABDIEL ANDERSON AND
POLICE OFFICER JOHN DOE,**
Respondent(s).

SUMMONS AND VERIFIED COMPLAINT

JOEL K. PEISTER, Esq.

*Attorney(s) for Plaintiff
9 East 40th Street, 11th Floor
New York, New York 10016
(212) 889- 8151*

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: APRIL 21, 2014 Signature [Signature]
Print Signer's Name: **JOEL K. PEISTER, ESQ.**

Service of a copy of the within is hereby admitted.
Dated: _____

Attorney(s) for Plaintiff

PLEASE TAKE NOTICE

☐
NOTICE OF ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

☐
the Hon.

NOTICE OF
SETTLEMENT

that an Order of which is a true copy will be presented for settlement to
one of the judges of the within named Court, at
on _____, at _____ M.

Dated: _____

JOEL K. PEISTER
*Attorney(s) for Plaintiff
9 East 40th Street, 11th Floor
New York, New York 10016
(212) 889 -8151*